

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROLAND ADAMS,

Defendant.

CR. 02-0257 EJG

ORDER DENYING MOTION TO
DISMISS COUNTS NINE & TEN,
MOTION FOR NEW TRIAL, AND
MOTION FOR RETURN OF 529 FUNDS

Defendant, a federal prisoner proceeding pro se, has filed various motions relating to his convictions and sentence in Cr. No. S-02-0257 (the fraud case) and Cr. No. S-02-0560 (the immigration case). This order addresses three motions pending in the fraud case: 1) motion to dismiss Counts Nine and Ten; 2) motion for a new trial on Counts Nine and Ten; and 3) motion for the return of 529 funds.

This case has a lengthy procedural history, recitation of which is not necessary to resolution of these motions. Suffice it to say that in 2006 while defendant's initial appeal of his convictions was pending, he filed numerous post-conviction

1 motions which the court held in abeyance pending resolution of
2 the appeal. Following appellate remand, a series of status
3 conferences and a hearing were held. These culminated in the
4 entry of an amended judgment in the fraud case on July 20, 2007
5 (imposing the same sentence with a modified forfeiture order) and
6 issuance of a briefing schedule for all of defendant's pending
7 motions. Defendant has filed an appeal from the amended judgment.

8 DISCUSSION

9 The three motions at issue in this order relate to Counts
10 Nine and Ten of Cr. No. S-02-0257, the fraud case. Since this
11 portion of the case is currently on appeal, the district court
12 lacks jurisdiction to proceed with the motions. The filing of a
13 notice of appeal "confers jurisdiction on the court of appeals
14 and divests the district court of its control over those aspects
15 of the case involved in the appeal." Griggs v. Provident
16 Consumer Discount Company, 459 U.S. 56, 58 (1982). In addition,
17 a number of the issues raised in the motions have been mooted by
18 the entry of the modified forfeiture order. Due to lack of
19 jurisdiction and mootness, the motions to dismiss Counts Nine and
20 Ten, for a new trial on Counts Nine and Ten, and for return of
21 529 funds are DENIED.

22 IT IS SO ORDERED. Dated: January 11, 2008

23 /s/ Edward J. Garcia
24 EDWARD J. GARCIA, JUDGE
25 UNITED STATES DISTRICT COURT
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